United Nations CAT/C/TUN/Q/3/Add.1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
16 February 2016
English
Original: Arabic
Arabic, English, French and Spanish only

Committee against Torture
Fifty-seventh session
18 April-13 May 2016
Item 7 of the provisional agenda
Consideration of reports submitted by States parties under article 19 of the Convention

List of issues in relation to the third periodic report of Tunisia

Addendum

Replies of Tunisia to the list of issues*

[Date received: 2 February 2016]

* The present document is being issued without formal editing.

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The Tunisian Government's response to the questions of the Committee against Torture

1. Under Basic Law No. 43 of 2013 (October 21 2013) on the National Commission for the Prevention of Torture, "New paragraph 4, which was added to article 5 of the Code of Criminal Procedure mentioned in the third article of Decree No. 106 of 2011 (22 October 2011), shall be repealed and replaced by the following provisions: "A public action in an offense of torture shall not lapse due to prescription". Thus, there is no incompatibility between article 23 of the Constitution and article 5 of the Code of Criminal Procedure. The offense of torture is thus not subject to a time bar. In addition, article 148 (9) of the Constitution states that "the State shall apply the transitional justice system in all its domains within the period set by legislation relating to the transitional justice system. In this regard, no claim of the retroactivity of laws, existence of a previous pardon, determinative effect of double jeopardy, or prescription of a crime or penalty shall be admissible". Likewise, Law No. 53 of 2013 (24 December 2013) Establishing and Regulating Transitional Justice, article 8, states that "actions stemming from the violations mentioned in article 8 of this law", including torture, "shall not lapse due to prescription". Accordingly, the principle of retroactivity may be applied to offenses according to the Constitution and the law.

2. According to the Strategic Plan of the Ministry of Justice (2012-2016), a plenary, multi-sector committee was established in the summer of 2014 in the Ministry of Justice to amend the provisions of the Criminal Code to conform with Tunisia's international obligations, including in the area of torture, and with the provisions of the Constitution. Thus, the committee will amend article 101 bis of the Criminal Code in line with the Constitution and Convention.

The judiciary has not received any cases of public officials acting in good faith to report an act of torture. Thus, no judge has adopted standards in this regard.

3.

(a) A request to extend the duration of police custody is subject to an obligatory consultation with the state prosecutor.

Resort is not made automatically to an extension. Rather, an extension is subject to the discretionary power of the Office of the Public Prosecutor and judicial supervision. The state prosecutor cannot undertake this measure without preparing a reasoned, written decision that includes the factual and legal grounds justifying the extension.

Extensions may be granted only in cases of serious misdemeanours, flagrante delicto, and felonies and they usually require the conduct of tests or the completion of certain procedures.

At the time of the uprising, action was taken to amend several articles of the Code of Criminal Procedure with a view toward establishing more guarantees concerning custody in felonies and misdemeanours by lowering the custody period from three days with notification of the state prosecutor to two days with the requirement to obtain an order from the state prosecutor. The draft amendment was lodged in February 2013 with the National Constituent Assembly. It was reviewed after the promulgation of the January 2014 Constitution in view of the guarantees provided in the Constitution. It was presented again to the Assembly of the Representatives of the People on 6 October 2014. The general legislation committee discussed the provisions of the draft. It approved the draft and referred its report thereon to the general session for the final stage of parliamentary discussion of the draft, which was taken up on 26 January, 2016.

In addition, the Ministry of Interior is acting to adapt training, qualification, and retraining programs for judicial investigation officials to the provisions of the law regarding respect for human rights and human dignity.

Following the uprising, the Ministry of Interior stepped up its efforts to strengthen legal guarantees and regulations concerning respect for the physical inviolability of detainees and the protection of their rights. Many administrative remarks, letters and cables were issued to officials of the internal security forces with strict instructions prohibiting abuse of the dignity of human beings and violation of their psychological and physical inviolability.

The ministry's various agencies have complied with orders and instructions issued by the legal and administrative authorities regarding human rights and general freedoms. They have been reminded periodically to ensure that their staff and employees understand these concepts and assimilate them in security work in the service of citizens. The departments of the Ministry of Labour have continued to spread and increase awareness of human rights among the various security units through cables and action notes covering full compliance with the legal procedures concerning respect for physical inviolability in action to improve detention conditions in respect of accommodations, food, hygiene and health maintenance. The ministry has devoted the utmost concern to the conduct of internal security force officers by conducting inspections and secret and open monitoring to identify professional errors, conduct administrative investigations, impose disciplinary penalties on violators and refer cases to the judiciary when necessary.

The human rights cell in the Ministry of Interior continues to function as an ombudsman. It handles complaints and petitions relating to human rights violations submitted by persons who allege they have been harmed as well as complaints submitted through national organizations (the Tunisian Organization against Torture, Tunisian League for the Defence of Human Rights, High Committee for Human Rights, complaints published in the newspapers) or international organizations (World Organization against Torture, Swiss Association against Torture, Human Rights Watch). During 2014 and 2015, 150 complaints and petitions were processed. They were studied and processed in coordination with the concerned departments in the Ministry of Interior based on a full desire to respond to them in writing with the requisite speed and thoroughness.

(b) The extension of custody is not systematic. Rather, it occurs after permission has been obtained from the state prosecutor pursuant to a reasoned decision that includes the factual and legal grounds justifying the extension under article 13 bis of the Code of Criminal Procedure. The state prosecutor usually corroborates the facts presented to him and the data available to him to determine whether custody of a suspect should be extended.

The investigation measures in terrorism offenses, in view of the ramified nature of such offenses (which extend over time and space), are subject to the supervision of the magistrate assigned to the concerned case. Requests for the extension of custody must be justified.

(c) The Ministry of Interior maintains an official list of certified remands. International and national organizations have been provided with copies of the list to enable them to conduct visits to monitor the conditions of, and submit reports on, detainees.

It is absolutely forbidden to keep a person in detention in the investigation units throughout the period of questioning.

Any person found to violate this prohibition is subject to disciplinary penalties. The Ministry of Interior has not been contacted regarding any such case.

(d) Tunisian law does not provide for the possibility of contesting custody or custody-extension decisions. The multi-sector plenary committee in the Ministry of Justice

created pursuant to the Strategic Plan for the Ministry of Justice (2012-2016) is currently working to amend the Code of Criminal Procedure in line with the Constitution and international standards.

(e) Draft Law No. 13/2013 allows a suspect in a misdemeanour or felony punishable by imprisonment, or one of his family members to select, within the custody period, a lawyer of their choosing (article 13, fifth paragraph). This draft was referred for passage to the general session of the Assembly of the Representatives of the People.

(f) Article 13 bis of the Code of Criminal Procedure stipulates that a suspect must be informed at the start of his period of custody of his rights under the law, including "the right to request a medical examination". The medical examination must be covered in a written report. The suspect or one of his family members may also request a medical examination during or at the end of the custody period. The speed with which a response is made to a request for a medical examination depends on the logistical and material resources available to the state.

Thus, the handing over of a detainee for a medical examination is legally guaranteed, and the Ministry of Interior complies therewith.

Based on the aforesaid article, when a medical examination is conducted at the request of the judicial police or the judiciary, the detainee may not select the physician who will conduct the examination. In this case, the examinations conducted by a physician with the requisite independence who has been hired to work with the Ministry of Health.

In practice, medical services are obtained during the custody period based on a request issued by a judge or the state attorney, who permit the conduct of a medical examination in the event of allegations of torture or ill-treatment. Such medical examinations are conducted urgently to permit the detection of traces of violence.

Tunisian judges and forensic physicians are trained according to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Judges thus use physicians to ensure compliance with the Istanbul Protocol. The physicians then write their reports according to the recommendations of the protocol with the objective of efficiently investigating acts of torture and other cruel, inhuman or degrading treatment.

(g) The Ministry of Interior abides by the physical inviolability of detainees. Violations of this sort have not been recorded.

Administrative supervision has been intensified through secret and open inspections and monitoring of security units to identify professional errors, conduct administrative investigations, impose disciplinary penalties on violators and refer cases to the judiciary when necessary. The penalties range from a warning and temporary dismissal to dismissal from employment.

4. The last paragraph of article 13 bis of the Code of Criminal Procedure stipulates that "the judicial police officers mentioned in the first paragraph of this article must keep, in the stations where persons are kept in custody, a special record with numbered pages, signed by the state prosecutor or assistant state prosecutor, in which the following must be recorded: identity of the person held in custody, date and time of the start and end of custody, notification of the family of the measure taken, any request made for a medical examination by an inmate or a parent, child, sibling or spouse of the inmate. In practice, the Office of the Public Prosecutor does not monitor the content of this record and only signs the pages of the record as a legal formality. However, no cases of falsification of the record have been reported.

The Ministry of Interior adopts disciplinary administrative or criminal measures if necessary in cases of falsification of records.

5. A number of years ago, Tunisia adopted Law No. 52 of 2002 (3 June 2002) Granting Legal Aid. Under Article 1 of the law, "Legal aid may be granted in a civil action to a natural person who is a petitioner or respondent in every phase of a case. It may also be granted in a criminal matter to a civil party and a petitioner for re-examination and in misdemeanours punishable by imprisonment of less than three years, provided the requester of the legal aid is not in a state of legal recidivism and the offense remains subject to the provisions in effect. Legal aid may be granted for the execution of judgments and exercise of the right of appeal. It may also be granted in criminal cases subject to cassation". In addition, an Office of Legal Aid has been established to receive requests for legal aid under article 4 of the aforesaid law. The development of legal aid measures enjoys priority in the Ministry of Justice's Strategic Vision for the Development of the Judicial and Prison System (2015-2019) inasmuch as such aid facilitates access to the judiciary by all litigants, particularly needy persons. Action is currently being taken to develop the legal aid system to better harmonize with the provisions of the Constitution.

In addition, under the Criminal Procedure Code, article 69, third and fourth paragraphs, in the case of a felony charge where the suspect has not chosen a lawyer and requests the appointment of a defender, a lawyer must be appointed for him by the president of the court, who must note the appointment in the record.

6. Law No. 75 of 2003 (10 December 2003) concerning Support of the International Effort to Counter Terrorism and Repress Money Laundering, as amended by Law No. 65 of 2009 (12 August 2009) was repealed under article 142 of Basic Law No. 26 of 2015 (7 August 2015) concerning the Combating of Terrorism and Repression of Money Laundering.

Unlike Law No. 75 of 2003, Law No. 26 of 2015 refrains from defining terrorism due to the impossibility of defining the phenomenon of terrorism empirically and due to the lack of a recognized international definition. The legislator desired to adopt an empirical approach based on the intent of this law, which is to combat, criminalize and punish terrorist acts. Therefore, article 13 defines the perpetrator of a terrorist offense as "any person who deliberately, by any means, carries out an individual or collective plan to commit an act which is the subject of articles 14-36 and is intended, by virtue of its nature or context, to sow fear in the population or induce a state or international organization to perform an act that it would have otherwise not performed or to refrain from performing an act that it would have otherwise performed". Articles 14-36 establish terrorism offenses, distinguishing offenses that cause death, involve physical violence , or are directed against persons who enjoy international protection. These changes in approach are intended to further regulate, combat and punish terrorism offenses.

Article 41 of the aforesaid law stipulates that "the state prosecutor of the court of first instance in Tunis alone may extend the period of custody twice for the same duration stipulated in article 39 of this law. If the state prosecutor decides to extend the period of custody, he must do so in a written, reasoned decision that includes the factual and legal grounds justifying the extension".

Law No. 26 of 2015 does not explicitly provide for the appointment of a lawyer in terrorism cases. However, the Code of Criminal Procedure, article 4, requires "the application of the provisions of the Criminal Code, Code of Criminal Procedure, Military Procedures and Penal Code, and special provisions concerning certain crimes and the procedures established for them to the offenses covered in Law No. 26 of 2015 to the extent that such provisions do not conflict with the provisions of law No. 26 of 2015".

7. The Supreme Council of the Judiciary guarantees the independence and proper conduct of the judicial authority according to the provisions of the Constitution and international standards. It also supports the independence of judges.

The government initiated the submission of a draft basic law in this regard during 2014. The draft was approved by the Council of Ministers and referred to the Assembly of the Representatives of the People on 12 March 2015. The general legislation committee in the council inserted a number of fundamental changes to the draft and referred it to the general session, which approved it on May 15, 2015 under No. 16/2015. Some members of the assembly contested the constitutionality of the law before the Provisional Commission to Review the Constitutionality of Draft Laws. The commission issued two decisions on the unconstitutionality of the draft law, the first under No. 02/2015 on 8 June 2015 and the second under No. 03/2015 on 22 December 2015, which is now being discussed in the general legislation committee with a view toward moving beyond the constitutionality issues.

Pending approval of the aforesaid basic law, the Provisional Commission for Supervising the Judiciary created under Basic Law No. 13 of 2013 (2 May 2013) continues to supervise judicial affairs, including the professional path of judges (appointments, promotions, transfers and discipline).

Regarding the Office of the Public Prosecutor, under the Constitution, article 115, "The Office of the Public Prosecutor shall be part of the judiciary and thus covered by the guarantees provided for the judiciary in the Constitution. The judges of the Office of the Public Prosecutor shall discharge their functions within the framework of the criminal policy of the State according to procedures regulated by the law".

Regarding access to a career in the judiciary, Law No. 29 of 1967 (14 July 1967) concerning the Judicial System, the Supreme Council of the Judiciary, and the Basic Law of Judges remains in effect to the extent that it does not conflict with the provisions of Basic Law No. 13 mentioned above. Law No. 13, article 29, stipulates that "judges shall be appointed from among holders of degrees from the Higher Institute of the Judiciary. The Minister for Justice shall, by decree, regulate the requirements for participation in the competition for admission to the aforesaid institute and the institute's system and programs". The latter are regulated by the Minister for Justice's Decree of 27 May 1991 Regulating the Program and Terms of Competition for Admission to Studies at the Higher Institute for the Judiciary. After two years of study at the aforesaid institute – as stated in Order No. 1290 of 1999 (7 of June 1999) Concerning the Regulation of the Higher Institute of the Judiciary, Its Studies and Tests System and Bylaws – the Commission examines the appointment of persons who obtain a certificate of completion of studies from the Higher Institute for the Judiciary to judicial posts and makes recommendations to the President of the Republic regarding the appointments on which it concurs.

Regarding the transfer of a judge, Basic Law No. 13, article 12 stipulates as follows:

"A judge may not be transferred from his post, even within the framework of a promotion or an appointment to a new post, without the judge's expressed written consent. The provisions of the previous paragraph shall not preclude the transfer of a judge to meet work requirements. Work requirements shall mean the need to fill a vacancy, appoint judges to new posts, handle an increase in the work load of a court or provide judicial staff when new courts are established. All judges shall be equal with respect to fulfilment of work requirements. A judge may not be required to change posts to fulfil work requirements unless it is established that no other judge is willing to assume the concerned post. For this purpose, judges serving in the nearest judicial circuit shall be assigned. In this case the rotation of judges shall be adopted. When necessary, lots shall be cast. Service to

fulfil work requirements may not exceed one year unless the concerned judge explicitly expresses a desire to remain in the post to which he has been transferred or appointed".

Regarding dismissals, the provisions of Basic Law No. 13/2013, articles 14 et seq. are applied.

A committee has been formed in the Ministry of Justice to revise Law No. 29 of 1967 concerning the Basic Law of Judges in line with international standards and the Constitution.

Regarding the Constitutional Court, Basic Law No. 50 of 2015 (3 December 2015) was issued. However, the establishment of the aforesaid court is pending the establishment of the Supreme Council of the Judiciary, which must appoint four members of the Constitutional Court according to the aforesaid basic law.

8. A technical committee has been formed in the Ministry of Relations with Constitutional, Civil Society, and Human Rights Organizations to draft a basic law pursuant to article 129 of the Constitution to establish a human rights committee that possesses a legal personality and financial and administrative independence in line with the Paris Principles. The draft is intended to create a national committee that protects and develops the human rights regime and strengthens its role in respect of oversight and the monitoring of violations. The draft will ensure diversity and pluralism in the committee's structure as well as flexible management and organization to strengthen the committee's independence and credibility.

9. The Assembly of the Representatives of the People is currently engaged in establishing the National Authority for the Prevention of Torture. This machinery is an irreversible gain. Forty-eight nominations will be presented for a vote in the general session in the next few months. The government will facilitate the establishment of this authority as soon as its members are elected and the necessary regulatory provisions are established regarding the grants and benefits of the authority's chairman, members, and employees, the authority's organizational structure, and the provision of all material and logistical requirements for the authority's operation.

10. A committee of legal experts is working to develop a new draft basic law on the elimination of violence against women of all ages. The law will provide for stronger penalties in cases where the perpetrator has power over the victim. It will also have an expanded definition of the forms of discrimination-based violence and will address marital rape for the first time in Tunisian law.

Further clarifications regarding violence against women may be provided in the framework of the discussion of Tunisia's report on the combating of violence against women, which will be lodged shortly with the concerned United Nations committee.

11. The government has prepared a draft basic law concerning the prohibition and combating of human trafficking. The draft was approved and referred to the Assembly of the Representatives of the People on 8 May 2015. It was discussed by the rights and freedoms committee, including in a hearing of the Ministry of Justice on 16 October 2015.

Tunisian law currently does not criminalize human trafficking. However, there are many pertinent legal provisions, e.g. concerning the use of a child to beg (Criminal Code, article 171, Third), pandering (article 237), inducing a person to be resold for profit [on] Tunisian soil through deception (259, Criminal Code). Consequently, there are no statistics on trafficking but rather assumed victims of such offenses.

The Ministry of Justice has created a temporary committee to supervise the development of a national strategy to combat human trafficking pending the issuance of a law and the establishment of a national committee to combat human trafficking. The

temporary committee has formulated the main principles of the strategy. It is currently developing these principles based on an action program that includes the establishment of practical mechanisms for combating human trafficking. The committee is also laying the ground for the preparation of a comprehensive, general database of trafficking cases.

12. The Criminal Code is currently being reviewed by the aforesaid committee formed in the Ministry of Justice. However, pending the completion of this review, superiors may be held responsible for acts of torture committed by their subordinates as participants in the criminal act committed under article 32 of the Criminal Code.

13. The Tunisian government lacks a national framework that regulates asylum. Thus, all asylum proceedings and applications are studied by the High Commissioner for Refugees Affairs according to the standards that regulate such procedures and applications.

14. The government has prepared a draft law on asylum and the establishment of a national committee to examine asylum applications. However, the law is still being discussed with the concerned entities.

Pending the issuance of the law, the High Commissioner for Refugees Affairs examines asylum cases.

Regarding extradition procedures, extradition is in principle conducted under ratified bilateral agreements between Tunisia and other states. Such agreements take precedence over the general provisions in this regard in the Code of Criminal Procedure (articles 308-335).

Tunisian law does not distinguish between a Tunisian suspect and a foreign suspect who is held in custody. Foreign suspects are granted all guarantees enjoyed by Tunisians. In addition, judicial police officers must inform a suspect, in a language which the suspect understands, of the measure taken against the suspect, the grounds and duration of the measure and the guarantees available to the suspect under the law (article 13 bis). The Ministry of Interior is also responsible for notifying the diplomatic mission of the suspect's state that the suspect is being prosecuted.

In application of the provisions of article 323, the Indictment Chamber of the Court of Appeal in Tunis (which is competent to examine extradition requests) issues opinions that are nonappealable.

Illegal immigrants are admitted and sheltered in the sheltering centre. They are directed temporarily to wait pending completion of a study of their circumstances and return to their countries. The Tunisian government alone bears the expenses of providing persons with accommodations, food, medical treatment, clothing, recreation, securement of their effects and property and information. It is also responsible for coordinating with various entities and representations of the immigrants' states and relevant nongovernmental organizations to arrange for the latter to extend assistance to the immigrants with the intent of returning them to their original countries as soon as possible.

15. Under Law No. 26 of 2015, article 88, paragraph 3, "extradition shall not be granted if there real grounds to believe that the person who is the subject of the extradition request risks being tortured or that the extradition request is intended to prosecute or punish a person because of the person's race, colour, origin, religion, sex, nationality or political ideas.

16. Under the Code of Criminal Procedure, as amended by Law No. 113 of 1993 (22 November 1993) and Decree No. 106 of 2011 (22 of October 2011), "Extradition shall also not be granted if: (1) the felony or misdemeanour is of a political nature (an attack against the head of state, one of his family members, or a member of the government is not considered a political crime); (2) the offense for which extradition is sought represents a

breach of military duty; and (3) it is feared that extradition would expose the person to torture".

Regarding the case of Baghdadi Ali Mahmudi, the latter was extradited in 2012 at the request of the Libyan authorities under bilateral extradition agreements between Tunisia and Libya after a government committee was formed and went to Libya to ascertain the custody conditions and availability of guarantees of a fair trial. After the extradition, a committee comprising representatives of the Tunisian government and civil society made two visits to Libya. These meetings were followed by a news conference with Baghdadi Ali Mahmudi in which he stated that he had not been abused while in custody.

17. There are currently no statistics on requests for the extradition of persons suspected of having committed acts of torture.

18. Care is taken so that training courses provide national academic expertise and high-level technical staff with demonstrable competence, expertise, and integrity in the judicial, security, and administrative fields. The Ministry of Interior inaugurated a training system on 14 January 2011 in cooperation with experts made available by specialized international bodies (Office of the High Commissioner for Human Rights and UNESCO), specialized international organizations (International Committee of the Red Cross, Geneva Centre for the Democratic Control of Armed Forces and International Organization for Migration and World Organization against Torture), and national rights organizations (Tunisian League for the Defence of Human Rights and the National Council for Freedom).

The training system targets members of the internal security forces (National Guard and National Police). It is based on the United Nations Human Rights Terms of Reference and national legislation on the protection of human rights and basic freedoms. The training system includes two integrated stages: the basic training stage for new hires, and the supplementary or qualifying training stage.

The Ministry of Interior cooperates with the Office of the High Commissioner of Human Rights in Tunisia to hold training courses in the schools and barracks of the security forces for various security corps (Public Security, National Guard, Intervention Units). The main subjects are human rights sources and standards, human rights monitoring and protection mechanisms, principles of ethical and legal conduct for the police, human rights and the prohibition of the practice of torture and degrading treatment, and international standards for arrest and custody. In addition, the United Nations team concerned with the implementation of programs to combat terrorism held a specialized training course on combating terrorism and respecting human rights in Tunisia.

The Ministry of Interior is also seeking to implement a community policing policy as a new security approach. A white paper was prepared on community policing. It covers standards and procedures for establishing community policing in Tunisia. Community policing has started at six model stations in an attempt to build strong relations between security officers and citizens based on a partnership of trust and mutual respect and on the provision of high-quality services that entrench the foundations of sustainable security with dignity.

Since community policing was inaugurated in six model stations, the program has gradually expanded and will be introduced at two new stations in 2016.

Staff and officers in charge of the custody system have also continued to receive training. As of the end of the courses in December 2014, 1330 additional officers had received training in escort methods, psychological stress management, human rights tools, and criminal procedures in respect of custody. During 2015, four project management training courses were held for project committee members, and workshops were held on the implementation of other project components.

19. In the framework of cooperation between UNESCO and the Ministry of Interior to train security officers in the fields of human rights, press rights, and security of journalists, the ministry initiated the preparation of a draft *Code of Conduct for Relations between the Internal Security Forces and Representatives of the Media* for adoption as a reference for methods of dealing with the media based on cooperation and mutual respect. The Ministry of Interior also devotes the utmost concern to training its subordinates by strengthening and teaching a human rights curriculum in the security schools. In this regard, basic training subjects include rules of conduct for law enforcement officers, professional security ethics, basic principles for the use of force and firearms by law enforcement officials, and laws. In addition, the Ministry of Interior, to further support freedom of opinion, initiated the amendment of Law No. 4 of 1969 Regulating Procedures concerning Public Meetings, Demonstrations, Processions, and Parades, as most of its provisions do not conform with the international standards adopted for this purpose. The ministry has issued action memoranda to its subordinates directing them stop enforcing certain articles of the law that do not conform with international standards and permit the use of firearms. Sessions, workshops and roundtables were also held, some of them with the participation of international parties (United Nations Development Program) and representatives of civil society to discuss these topic and formulate a general concept of the standards and rules that should be observed. Subsequently, the Ministry of Interior, after holding consultations, submitted a draft new Basic Law Regulating the Exercise of the Right to Hold Assemblies and the Right to Peaceful Demonstration that conforms with international standards. The draft has been submitted to the Office of the Prime Minister for referral to the legislative authority for discussion and a vote.

Since 2013, a number of training courses have been held in Tunisia and abroad for medical and paramedical personnel working in prisons. The courses — which were held in cooperation with the Ministry of Health, Ministry of Justice, and the International Committee of the Red Cross — focused on inmate health.

20. Regarding training of medical staff working with persons deprived of their liberty, in 2014, the Forensic Medicine Department at Charles Nicolle Hospital, in cooperation with the General Prisons Administration, provided three training courses for prison physicians in Tunisia.

National and international experts taught six instructional units: introduction to health during incarceration, medical ethics and places of detention, intervention of a physician in a custody case, hunger strikes, isolation in solitary confinement, torture and ill treatment in places of detention.

In academic year 2016-2017, these courses will be added to the College of Medicine of Tunis for a university certificate program in prison medicine.

21. The prison system is currently being restructured according to international standards. This involves renovating the prison infrastructure, reviewing the relevant legislative framework and gradually implementing the recommendations arising from the evaluation of the situation of the prisons.

22. In prison institutions in which medical staff are available, medical examination is conducted automatically within 48 hours of the date of incarceration.

(a) As to whether medical staff are in a position to examine detainees out of earshot and out of sight of prison guards, when examinations are conducted in a prison, the prison health sections guarantee the confidentiality and privacy of the examination. When an examination is conducted by request of the judiciary in the forensic medicine sections in public health entities and institutions, the prison guards do not accompany the detainees into the examination room where the medical examination is conducted, which is out of earshot and sight of the guards.

(b) As to whether medical records can be consulted by the detainee and his or her lawyer upon request, Order No. 1634 of 1981 (30 November 1981) concerning Regulation of the General Internal Organization of Hospitals and Competent Institutions and Centres of the Ministry of Public Health, article 72, stipulates that medical records are the property of the concerned institution.

Within prisons, medical records are also considered the property of the prison institution. Thus, they may not be transferred to a lawyer without an order from the judiciary (order on request). The provisions in effect require the lawyer to submit a written request to the judge. The judge may order the treating physician to write a medical report that includes the necessary data for submission to the judge, who, in turn, transmits the report to the lawyer.

(c) Regarding the points contained in the medical report written after medical examinations, all medical reports contain the (i) statements by the individual concerned, (ii) objective medical observations, and (iii) the doctor's conclusions in light of points (i) and (ii) above.

The medical reports of prison doctors provide a descriptive basis while the medical tests ordered by the judiciary are generally conducted by forensic physicians according to the Istanbul Protocol and are based primarily on the correspondence of abuse allegations with objective medical conclusions.

(d) Regarding whether medical personnel are able to report, in complete confidence, any signs of torture to the sentencing judge, state attorney or inspection officers, medical staff respond to all requests submitted by the sentencing judge, state attorney and prison inspection officers through sealed medical reports transmitted in sealed envelopes to various parties via the prison health administration, which observes the confidentiality of medical information.

24. Suspicious deaths are subject to specialized judicial investigations.

25. Under Law No. 52 of 2001 (14 May 2001) concerning the Prison System, article 10, "If a child must be placed in prison, the child shall be placed in a special wing for children and must be separated at night from adult inmates. A child is any person aged 18 or below upon being placed in prison".

26. Under the Code of Criminal Procedure, article 10, "Judicial police functions are discharged under the supervision of the state attorney and the public prosecutor's assigned to the courts of appeal, each within his jurisdiction ..." Such supervision is not actual, in-person, constant supervision but rather legal supervision of measures taken.

The measures adopted to implement and ensure effective supervision of interrogations consist of the following:

- The appointment of a lawyer, which is a constitutionally guaranteed right in respect of interrogation representations;
- The Ministry of Interior adopted, and began to post at security stations, a poster dealing with "the rights of persons held in custody", including:

  1. The suspect's right to be informed immediately of his rights and the accusation against him.

  2. The right to be presumed innocent.

  3. The right to not respond to questions and to not be subject to torture, coercion or inhuman or degrading treatment.

  4. The right to notify his family of his detention.

5. The right of the suspect or his family members to request a medical examination and to receive medical treatment.

6. The suspect's right to privacy and to be brought before the judiciary without delay.

7. The right to representation by an attorney as regulated by the law.

8. The right to file a complaint in the event that the boundaries of authority are exceeded.

27. Regarding the implementation of the observation mechanism at places of deprivation of liberty in order to monitor the treatment and conditions of persons deprived of their liberty, the Ministry of Interior has permitted the International Committee of the Red Cross, Office of the High Commissioner for Human Rights in Tunisia and Higher Committee for Human Rights and Fundamental Freedoms to keep an official record of detention rooms of the Ministry of Interior exclusively with the objective of opening the way for them "to visit detention centres" and to provide an opportunity to speak with detainees separately without a guard being present and to submit reports and recommendations in regard to such visits.

Regarding the submission of explanations as to why the Special Rapporteur on torture was denied access to the Gorjani Barracks, it is important to emphasize that the Gorjani Barracks is an investigation unit, not a detention centre, and is thus subject to the exclusive supervision of magistrates.

28. There are a series of cases before the judiciary concerning suspicion of torture. Precise, detailed statistics on type of offense and investigating authority are currently unavailable.

29. A project has been launched to develop cooperation between the Ministry of Interior and the European Union to reform the security sector through peer review. The project includes the conduct of an analysis by European Union experts of the situation in the security sector in cooperation with experts and officials of the Ministry of Interior. It seeks to identify and scrutinize technical assistance mechanisms available in the areas of combating terrorism, queries, judicial police, general security and strategic governance of the security sector.

30. The judiciary investigates cases of security officers suspected of engaging in torture and ill-treatment in judicial police stations. It empowers a neutral entity to conduct investigations.

The representative of the Office of the Public Prosecutor has no connection with the disciplinary agencies of any ministry unless a criminal case is transferred from such an agency or in the event that the representative of the Office of the Public Prosecutor notifies such agencies of a criminal prosecution against an official.

The structural organization of the sectoral inspectorates ensures a separation between the conduct of administrative investigations and the prosecution of procedural cases. The Inspectorate-General of the departments of the Ministry of Interior enjoys complete independence from the other bodies of the ministry. If there is evidence of the commission by officials of acts of torture or ill-treatment, suspension from work is considered a precautionary measure taken by the administration pending the conduct of an investigation pursuant to the provisions of Law No. 70 of 1982 Regulating the General Basic Law of the Internal Security Forces.

31. Regarding the absence of victims from the proceedings and investigations concerning cases arising from the uprising that were heard by the military courts in Tunis, Le Kef and Sfax, it should be emphasized that the military judiciary undertook the cases of

persons killed and wounded in the uprising during May 2011 after the civilian justice courts had withdrawn from the cases. The Office of the Military Prosecutor ordered the opening of investigations in all those cases, which were examined by the military magistrates in the three military courts of first instance based on jurisdiction.

In addition, the damaged parties in those cases were heard, and investigations and fact-finding were conducted according to the procedures stipulated in the Military Procedures and Penal Code at the time, which did not provide for the bringing a civil action before the military courts.

The Military Procedures and Penal Code was amended by Decree No. 69 of 2011 (29 July 2011) to strengthen guarantees of a fair trial before the military judiciary. It thus became possible to bring a public civil action before the military courts according to the rules and procedures stipulated in the Code of Criminal Procedure.

The amendment of the Military Procedures and Penal Code coincided with the hearing of those cases before the legal panels in the military courts of first instance in the light of which civil claims were filed directly by damaged parties or through their attorneys. This included the filing of petitions to conduct supplementary investigations. The military courts, including the Military Court of Appeal, responded to many such petitions. Preliminary actions and supplementary investigations were conducted in response to the petitions of the lawyers for the parties bringing civil actions. Petitions were submitted to request that the court examine suspects and witnesses during the first-instance and appeal stages, to hear testimony from security and civil officials who performed functions during the period of the events, to conduct additional confrontations between multiple parties in the cases, and to repeat the medical examinations of certain damaged parties to determine the percentage of disability based on the aggravation of harm. Petitions were also filed demanding moral damages in civil actions. A response was made to all such petitions, excluding petitions not relating to the proceedings of the public or civil action, such as petitions for the transfer of court sessions to outside the primary seats of the courts.

Upon the issuance of rulings in these cases, the legal chambers undertook to decide civil actions in addition to criminal actions.

Accordingly, saying that victims were absent from the proceedings and investigations conducted in cases relating to the uprising skirts the truth and reality.

Regarding the question of whether the state intends to retry cases involving offenses committed during the uprising between December 2010 and January 2011, which the military courts have already heard, the response is as follows: Under the Constitution, article 148 (9), no claim of the determinative effect of double jeopardy is admissible in the context of the transitional justice system. Therefore, if the Truth and Dignity Commission undertakes cases concerning such offenses, it may refer those cases to the criminal chambers specialized in this area for re-examination according to the Transitional Justice Law.

34. Order No. 2887 of 2014 (8 August 2014) regulates the establishment of criminal chambers specialized in transitional justice in the courts of first instance that have been set up in the seats of the courts of appeal in Tunis, Sfax, Gafsa, Gabes, Sousse, Bizerte, Le Kef, Kasserine and Sidi Bouzid. Although these chambers have been established, they have yet to receive cases from the Truth and Dignity Commission.

The Truth and Dignity Commission is in the process of establishing an integrated regime for compensating victims of past violations, particularly victims of torture.

35. A number of years ago, Tunisia adopted Law No. 52 of 2002 (3 June 2002) concerning the Granting Legal Aid. Under Article 1 of the law, "Legal aid may be granted in a civil action to a natural person who is a petitioner or respondent in every phase of a

case. It may also be granted in a criminal matter to a civil party and a petitioner for re-examination and in misdemeanours punishable by imprisonment of less than three years, provided the requester of the legal aid is not in a state of legal recidivism and the offense remains subject to the provisions in effect. Legal aid may be granted for the execution of judgments and exercise of the right of appeal. It may also be granted in criminal cases subject to cassation". In addition, an Office of Legal Aid has been established to receive requests for legal aid under article 4 of the aforesaid law. The development of legal aid measures enjoys priority in the Ministry of Justice's Strategic Vision for the Development of the Judicial and Prison System (2015-2019) inasmuch as such aid facilitates access to the judiciary by all litigants, particularly needy persons. Action is currently being taken to develop the legal aid system to better harmonize with the provisions of the Constitution.

37. Accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, under which the states commit to abolishing the death penalty, requires a broad societal dialogue, particularly inasmuch as under the current Constitution, article 22, "The right to life shall be sacred and shall not be prejudiced except in extreme cases regulated by law".

38. The case regarding the Siliana incident in November 2012, was assigned to the military judiciary on 30 November 2012. A temporary investigation was initiated by the Military Investigation Bureau in the Permanent Military Court of First Instance in Le Kef under the Code of Criminal Procedure, Article 31. Investigations were conducted. The case was referred to the Office of the Military Prosecutor, which decided on 16 April 2013 to open an investigation against any public official found to have committed, without cause during the performance of his duty, a violent assault against another person that could be expected to result in physical disability exceeding 20 percent and unintentional bodily harm to another person under the Criminal Code, articles 101, 219 and 225.

Accordingly, the military magistrate heard a number of security officials and indicted a number of them. In addition, 112 damaged parties were heard, and 35 civil actions relating thereto were admitted. Investigations remain ongoing because 74 damaged parties were not heard despite legal summons being sent to them. Thus, the case remains pending.

40. All measures and operations concerning relocation and the raiding of homes have been carried out according to judicial orders (Office of the Public Prosecutor and the assigned magistrate).

41. Regarding the protective care of threatened children, the child protection delegate:

1. Receives reports and enters them into the administrative record; and collects the necessary preliminary information on the child targeted for intervention and the persons involved in the case.

2. Conducts fact-finding on the seriousness of the threat. The delegate undertakes a number of measures after submitting a petition to the family magistrate to obtain a judicial warrant to:

- Summon the child and his parents to hear their statements and responses to the facts of the report of endangerment of the child;
- Enter any premises where the child is located (kindergarten, school, factory, workshop) accompanied by whomever the delegate deems useful to accompany him (physician, labour inspector, social worker, a relative of the child);
- Undertake investigations personally.

The child protection delegate may also resort to other parties and request reports or social and psychological studies concerning the reported situation.

3. Evaluates the seriousness of the report based on investigations and information that is obtained. The delegate determines the seriousness of the threat and whether it is necessary to classify the case in accordance with the Child Protection Code, article 20, which stipulates that "the following in particular shall be considered difficult cases threatening a child's physical or mental well-being: (a) the loss of parents where the child is left without family support; (b) exposure of the child to negligence or vagrancy; (c) manifest, ongoing lack of education and protection; (d) habitual ill-treatment of the child; (e) sexual exploitation of the child, whether boy or girl; (f) exploitation of the child in organized crime; (g) exposure of a child to begging, and economic exploitation of the child; and (h) The inability of child's parents or custodian to protect and educate the child.

4. Provides for social protection. The child protection delegate classifies the child's situation to determine appropriate measures concerning the child if the delegate identifies an actual threat to the child's health or physical and psychological well-being. The delegate identifies the appropriate measure according to the danger posed by the child's situation and recommends appropriate consensual measures or submits the matter to the family magistrate based on summary procedures in cases of neglect, vagrancy or danger.

5. Provides for judicial protection. The child protection delegate:

- Petitions the family magistrate to take custody of the threatened child;
- Assists the family magistrate in determining the facts of the threatened child's situation and the child's needs;
- Recommends urgent, temporary measures to separate the threatened child from his family for the safety of the child;
- Assists the family magistrate in monitoring the implementation of the judgments and measures adopted or ordered in respect of the child.

The Ministry of Women' s Affairs, Family and Children, in coordination with its regional offices, has adopted the necessary measures and procedures to conduct investigations through the pedagogical inspection and guidance staff. If a child in a private educational institution is violated, all protective measures stipulated in the chapter on violations in the manuals of requirements of private institutions are taken. If a child is violated in a public educational institution, the offices of the ministry are responsible for taking the necessary disciplinary measures in respect of staff charged with the violation or abuse of children.

A series of circulars has been issued to underscore the need to comply with the legal regime pertaining to early childhood institutions and to supervise these institutions. Other circulars and memoranda have been issued to inveigh against any type of violence, harm, or abuse directed against children, e.g.:

- The Prime Minister's Circular No. 12 of 2014 (14 April 2014) on Compliance with the Legal Regime Pertaining to Early Childhood Institutions;
- The Ministry's Circular of 12 February 2014 Permitting Associations and Civil Society organizations to Conduct Field Visits to Public Institutions Concerned with Children;
- The Ministry's Circular of 2 May 2014 on Violence against Children in Children's Institutions;

- General Children's Administration Memorandum 4162 of 2014 on the Publication of Images of Children on Social Media.

Regarding the establishment of a system to collect and analyse data on the exploitation and abuse of children, the ministry relies primarily on the information system established in the framework of joint child protection programs with UNICEF. Reports received by the child protection delegates are entered into this system. In addition, instruction, information, and training on the prohibition and prevention of torture have been incorporated in training programs for law enforcement officials.

In the context of the annual action program with UNICEF, the Ministry plans activities, produces sensitization materials and develops the capacities of associations and staff working in public and private children's institutions to combat violence against children.

Also, investigations of allegations of torture and ill-treatment and the effects thereof will be strengthened through:

- Support of the legal system by promulgating a law (currently being drafted) to regulate the children's nurseries sector. The law is intended to support reform by combating the unregulated opening of nurseries and kindergartens and all forms of violation of the physical and psychological inviolability of the child;
- The ministry's resolve to promote the quality of services provided in kindergartens and nurseries, facilitate access to kindergartens and nurseries, shut down unregulated spaces, revive municipal kindergartens, promote kindergartens in children's clubs, and enable the children of needy families to enrol in early childhood institutions;
- The National Plan for the Educational and Psychological Support of Children in Priority Areas. The plan covers 5000 children and is included in the National Plan to Combat Terrorism.

The child in conflict with the law

Requests for mediation according to gender during 2014

Child protection delegate in:	*No. of mediation requests*	*No. of mediation request — females*	*No. of mediation requests — males*	*No. of children*	*No. of children — female*	*No. of children — male*
Tunis	87	3	84	66	3	63
Ariana	19	1	18	19	1	18
Ben Arous	1	0	1	1	0	1
Manouba	8	0	8	5	0	5
Nabeul	10	0	10	10	0	10
Zaghouan	2	0	2	2	0	2
Bizerte	3	0	3	3	0	3
Beja	18	2	16	18	2	16
Jendouba	4	1	3	4	1	3
Le Kef	0	0	0	0	0	0
Siliana	0	0	0	0	0	0
Kairouan	0	0	0	0	0	0
Kasserine	0	0	0	0	0	0
Sidi Bouzid	0	0	0	0	0	0

Child protection delegate in:	*No. of mediation requests*	*No. of mediation request — females*	*No. of mediation requests — males*	*No. of children*	*No. of children — female*	*No. of children — male*
Sousse	39	1	38	31	1	30
Monastir	65	1	64	38	1	37
Mahdia	13	1	12	12	1	11
Sfax	50	4	46	49	4	45
Gafsa	0	0	0	0	0	0
Tozeur	3	0	3	3	0	3
Kebili	2	2	0	1	1	0
Gabes	18	0	18	16	0	16
Medenine	0	0	0	0	0	0
Tataouine	19	2	17	18	2	16
Total	**361**	**18**		**296**	**17**	**279**

Reports received according to threat type during 2014

Child protection delegate in:	*Indicator 1: The loss of parents where the child is left without family support*	*Indicator 2: Exposure of the child to negligence or vagrancy*	*Indicator 3: Manifest, ongoing lack of education and protection*	*Indicator 4: Habitual ill-treatment of the child*	*Indicator 5: Sexual exploitation of the child, whether boy or girl*	*Indicator 6: Exploitation of the child in organized crime*	*Indicator 7: Exposure of the child to begging, and economic exploitation of the child*	*Indicator 8: The inability of child's parents or custodian to protect and educate the child*	*Indicator 9: Other*
Tunis	15	103	108	97	62	16	6	318	0
Ariana	20	36	129	39	12	1	3	114	0
Ben Arous	19	65	65	49	13	0	0	132	0
Manouba	15	52	72	40	11	1	0	38	0
Nabeul	2	67	130	37	32	1	3	96	0
Zaghouan	7	40	33	20	9	0	11	48	0
Bizerte	29	106	117	92	22	7	0	159	0
Beja	6	74	64	63	10	0	4	60	0
Jendouba	0	29	14	14	0	1	1	16	0
Le Kef	3	22	50	44	14	1	1	77	0
Siliana	1	12	38	23	4	0	0	59	0
Kairouan	3	10	24	2	2	0	1	24	0
Kasserine	7	13	88	32	3	0	0	72	0
Sidi Bouzid	6	24	79	24	5	0	2	45	1
Sousse	119	84	15	40	28	0	12	27	0
Monastir	60	53	65	47	24	1	2	41	0
Mahdia	7	25	39	8	12	0	3	31	0
Sfax	23	101	134	77	42	1	4	77	0
Gafsa	16	32	35	23	6	0	0	65	0
Tozeur	4	4	48	36	3	0	0	76	0
Kebili	0	18	19	14	5	0	0	59	0

Child protection delegate in:	*Indicator 1: The loss of parents where the child is left without family support*	*Indicator 2: Exposure of the child to negligence or vagrancy*	*Indicator 3: Manifest, ongoing lack of education and protection*	*Indicator 4: Habitual ill-treatment of the child*	*Indicator 5: Sexual exploitation of the child, whether boy or girl*	*Indicator 6: Exploitation of the child in organized crime*	*Indicator 7: Exposure of the child to begging, and economic exploitation of the child*	*Indicator 8: The inability of child's parents or custodian to protect and educate the child*	*Indicator 9: Other*
Gabes	3	26	45	8	4	0	0	40	0
Medenine	3	8	30	2	1	0	0	23	0
Tataouine	31	4	6	1	0	0	0	2	2
Total	**399**	**1 008**	**1 447**	**832**	**324**	**30**	**53**	**1 699**	**3**

Reports received according to gender during 2014

Child protection delegate in:	*No. of reports*	*No. of reports — females*	*No. of children*	*No. of children — female*	*No. of children — male*
Tunis	725	385	340	375	327
Ariana	354	163	191	163	191
Ben Arous	343	160	183	160	183
Manouba	229	115	114	114	113
Nabeul	368	191	177	189	175
Zaghouan	168	74	94	74	93
Bizerte	532	263	269	262	268
Beja	281	136	145	136	145
Jendouba	75	39	36	39	36
Le Kef	212	100	112	96	105
Siliana	137	53	84	52	82
Kairouan	66	27	39	27	39
Kasserine	215	90	125	89	118
Sidi Bouzid	186	93	93	90	92
Sousse	325	157	168	152	165
Monastir	293	149	144	145	142
Mahdia	125	62	63	60	63
Sfax	459	236	223	236	223
Gafsa	177	96	81	88	79
Tozeur	171	89	82	89	81
Kebili	115	50	65	49	65
Gabes	126	61	65	61	65
Medenine	67	33	34	32	33
Tataouine	46	26	20	24	20
Total	**5 795**	**2 848**	**2 947**	**2 787**	**2 881**